

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE: B-214740****DATE: October 2, 1984****MATTER OF: Kathleen M. Legault**

DIGEST: An Air Force National Guard Technician erroneously received pay at the GS-10 level after she was improperly promoted from a GS-8 position into a superseded GS-10 position that had been previously reclassified to GS-9. The portion of the Government's claim for sums paid prior to the date she was notified of the error was properly waived under 5 U.S.C. § 5584. The portion of the Government's claim for the amount paid after she was notified of the error but before the effective date of corrective action may not be waived since the employee could not have assumed, as of the date of notice, that she could retain the overpayment.

This is an appeal from our Claims Group's determination that the Government's claim for a portion of an amount erroneously paid to an Air Force National Guard Technician may not be waived under 5 U.S.C. § 5584. The issue is whether an employee who was notified that she was being paid at the wrong grade level is entitled to waiver of additional overpayments made after that notice but before the date of the personnel action effecting the correction in her pay. Because the employee was aware of these overpayments when they occurred the portion erroneously paid after notice may not be waived.

On September 9, 1979, the Air Force National Guard promoted Ms. Kathleen M. Legault from a GS-8 position to a superseded GS-10 position that had been reclassified in June 1979 to GS-9. The National Guard notified Ms. Legault of the error on June 26, 1980, and advised her that corrective action would be taken no later than August 10, 1980. After notification, Ms. Legault continued receiving overpayments at the GS-10 level until her rate of pay was corrected in August 1980. Although the National Guard recommended that the entire overpayment from September 9, 1979, to August 1980, be waived,

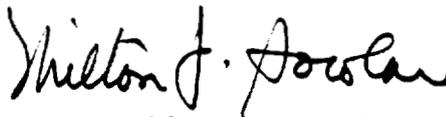
030223

07474

B-214740

our Claims Group waived all but the portion of the overpayment Ms. Legault received after notification of the erroneous rate of pay. We agree with the Claims Group that only the overpayment she received before notification may be waived.

The statute authorizing the waiver of claims of the United States against employees arising out of erroneous payments of pay, 5 U.S.C. § 5584 (1982), permits such waivers only when the collection of the erroneous payments would be against equity and good conscience and not in the best interests of the United States and only when there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee, or any other person having an interest in obtaining the waiver. Waiver is appropriate for the portion of the overpayment to Ms. Legault between September 9, 1979, and June 25, 1980, which occurred when she had no reason to suspect an overpayment. However, we have consistently held that an employee who is aware of an erroneous payment when it occurs is not free from fault and is not entitled to relief under 5 U.S.C. § 5584. As of the point an employee is notified of an error, that individual can no longer assume in good faith that he or she has a right to retain future overpayments that are a consequence of that error. Doris M. Carlino, B-204410(1), March 18, 1982; John J. Short, B-212402, December 14, 1983. Therefore, the portion of the overpayment occurring after July 26, 1980, when Ms. Legault was notified of the incorrect pay rate, but before actual payroll correction in August, may not be waived. Our Claims Group's determination, therefore, is affirmed.

for 
Comptroller General
of the United States